

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Kittitas Valley Paging Limited Partnership)	
)	File No. 0000053376
For Renewal or Reinstatement of the License for)	
Two-Way Paging Station KNKI817 in the Paging)	
and Radiotelephone Service at Ellensburg,)	
Washington)	

MEMORANDUM OPINION AND ORDER

Adopted: March 27, 2002

Released: March 28, 2002

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this order, we address a Petition for Reconsideration (Petition) filed by Kittitas Valley Paging Limited Partnership (Kittitas) on April 7, 2000. Kittitas seeks reconsideration of an action taken by the Licensing and Technical Analysis Branch (Branch) of the Commercial Wireless Division (Division) which: 1) dismissed the above-captioned application for renewal or reinstatement; and 2) denied Kittitas's alternative request for waiver to reauthorize call sign KNKI817.¹ As discussed below, we find that Kittitas's renewal application was properly dismissed. However, we grant in part Kittitas's petition for reconsideration of the denial of its request for waiver, subject to certain terms and conditions set forth herein. These license conditions will include a requirement that Kittitas operate on a secondary, non-interference basis.

II. BACKGROUND

2. On April 1, 1986, the Commission granted Kittitas's application to operate new Public Land Mobile (PLM) base stations on 158.10 MHz at Ellensburg and Roslyn, WA under call sign KNKI817. The authorization for both facilities expired on July 1, 1988² pursuant to Kittitas's license, the *1983 Licensing Order*³ and a clarifying 1988 Commission Public Notice.⁴ The *1983 Licensing Order*

¹ See *Public Notice*, Wireless Telecommunications Bureau Site-by-Site Actions, Report No. 472, rel. March 8, 2000.

² See former section 22.45 of the Commission's rules, which provided that authorizations for Public Land Mobile Stations (Wireline Common Carrier) expired on July 1 in the year of expiration. 47 C.F.R. § 22.45 (1986). Kittitas is a wholly owned subsidiary of Ellensburg Telephone Company, a wire-line telephone company, and therefore is classified as a wire-line common carrier.

³ Common Carrier and Satellite Licensing Procedures Pursuant to the Communications Amendments Act of 1982, *Report and Order*, CC Docket No. 83-371, 48 FR 27251 (*1983 Licensing Order*).

⁴ In 1988, the Common Carrier Bureau provided additional notice to wireline common carrier PLM licensees of the July 1, 1988 uniform license expiration date. See *Public Notice*, "Common Carrier Public Mobile Services Information - License Renewals," Mimeo 2661, rel. April 21, 1988 (*License Renewal PN*).

extended the license terms of all existing PLM licensees for an additional five years, resulting in a total license term of ten years for those authorizations. As a result, existing PLM station licenses expired on uniform dates which, for wireline common carriers, was July 1, 1988.⁵

3. In 1987, Kittitas filed a notification of construction of facilities indicating that it constructed and made operational one of the two licensed facilities, *i.e.* the Ellensburg, WA site.⁶ Kittitas did not file a renewal application for call sign KNKI817 on or before the July 1, 1988 expiration date. On February 11, 1998, Kittitas filed a renewal application for call sign KNKI817, accompanied by a “Petition for Leave to File a Late-Filed License Renewal Application, or in the Alternative, New Facilities Application and Request for Waiver of the Paging Freeze” (Waiver Request).⁷ In its Waiver Request, Kittitas stated that it was unaware of the July 1, 1988 expiration date because it did not receive a covering license from the Commission listing an expiration date.⁸ Kittitas also stated that it reasonably believed that its license to operate at the Ellensburg, WA site expired on July 1, 1996 because: 1) the *1983 Licensing Order* only applied to then existing licensees, not Kittitas, as its license was not granted until 1986; and 2) the Commission had indicated that PLM licenses were to be granted for a ten-year period.⁹ In the alternative, Kittitas requested a waiver to file for authority to operate a one-way station on 158.10 MHz at Ellensburg, WA.¹⁰

4. On February 28, 2000, the Branch denied Kittitas’s application seeking renewal, stating that Kittitas was charged with knowledge of former rule section 22.45 and the *1983 Licensing Order*, which established a July 1, 1988 expiration date for PLM licenses designated as wireline common carriers.¹¹ The Branch also denied Kittitas’s request for waiver for failure to make the appropriate public interest showing.¹² On March 8, 2000, the Branch dismissed Kittitas’s renewal application by public notice.¹³

5. On April 7, 2000, Kittitas filed the instant Petition seeking reconsideration of the dismissal action. In its Petition, Kittitas again argues that it reviewed former section 22.45 of the rules and determined that PLM licenses were valid for ten years and therefore Kittitas’s license could not have expired prior to July 1, 1996.¹⁴ Kittitas argues that its request for renewal was only nineteen months late, rather than ten years late, and therefore the Commission erred in not reinstating the authorization or, in the alternative, granting a waiver to permit the licensing of the station anew.¹⁵ Kittitas also argues that the

⁵ See *1983 Licensing Order* at fn. 11.

⁶ Kittitas’s filing indicated that the Roslyn, WA facility was not constructed. Kittitas is not seeking to reinstate its former license at the Roslyn, WA site.

⁷ Kittitas also filed an application seeking consent to a transfer control of station KNKI817, which the Branch granted on April 17, 1998. See *Public Notice*, Report No. LB-98-36, rel. April 17, 1998.

⁸ Kittitas Waiver Request at 2.

⁹ Kittitas Waiver Request at 4-6.

¹⁰ Kittitas Waiver Request at 7-8.

¹¹ See Letter from Roger Noel, Chief, Licensing and Technical Analysis Branch, to Kittitas Valley Paging Limited Partnership, dated Feb. 28, 2000. The Branch further found that even if Kittitas was correct in its belief that its license was issued for a ten-year period expiring in 1996, Kittitas failed to seek renewal until 1998.

¹² *Id.* (citing former section 22.45). The Branch did, however, grant Kittitas special temporary authority to continue operating.

¹³ *Public Notice*, Report No. 472, released March 8, 2000.

¹⁴ Petition at 4-6.

¹⁵ Petition at 5-7.

Commission granted a request for transfer of control of Kittitas and that Kittitas reasonably believed this was in fact a grant of its request for reinstatement of call sign KNKI817.¹⁶ Since Kittitas filed its Waiver Request and Petition, upper and lower band paging spectrum has been auctioned on a geographic basis, including 158.10 MHz in the Ellensburg, WA area.¹⁷

III. DISCUSSION

6. In the *1983 Licensing Order*, the Commission adopted rule section 22.45 and established uniform expiration dates on a service-by-service basis for Part 21 and Part 22 stations. All PLM wireline common carrier licenses were designated to expire on July 1 in the year of expiration.¹⁸ The *1983 Licensing Order* extended existing licensees' license terms for an additional five years, resulting in a total license term of ten years for those licenses. Accordingly, all PLM wireline licensees previously due to expire on July 1, 1983 were subject to an extended uniform expiration date of July 1, 1988. Kittitas is correct that the *1983 Licensing Order* extended the terms of *existing* licensees, and did not expressly indicate that licenses granted after the order's adoption date would also expire in 1988. Kittitas is wrong, however, in interpreting the *1983 Licensing Order* to mean that each newly granted license would have a ten-year term commencing with the grant date of each individual license. Kittitas bases this interpretation on the *1983 Licensing Order* statement that "in the future, all common carrier and all fixed satellite licenses will be issued for a period of ten years unless limited by rule or the actual authorization." This interpretation is incorrect because the Commission only issued PLM authorizations for ten year license terms after the expiration of the remaining license term associated with the uniform expiration date set forth in former rule section 22.45.¹⁹

7. In Kittitas's case, its authorization initially granted in 1986 expired in July 1988, the applicable uniform expiration date for that service. Kittitas's argument that its authorization expired in July 1996, rather than July, 1988, is without merit. The Commission eliminated any confusion that may have existed regarding the applicable expiration dates for PLM wireline licenses granted after the adoption of the *1983 Licensing Order*, but prior to the July 1, 1988 expiration date, by issuing the *License Renewal PN* on April 21, 1988. The *License Renewal PN* applied to all PLM wireline licensees (like Kittitas), not just those licensees authorized at the time of the *1983 Licensing Order*, and specifically provided that "[w]ireline common carriers are required to file renewal applications for Public Mobile Service authorizations no earlier than 60 days but not less than 30 days before July 1, 1988"²⁰ Kittitas was therefore required to renew its authorization prior to the July 1, 1988 license expiration date.

8. We find without merit Kittitas's argument that it did not receive a covering license and therefore did not receive notice of the license expiration. Kittitas states in its Petition that "...counsel inspected the Commission's public station file for station KNKI817, which inspection revealed that the Commission had apparently never issued a license for station KNKI817...." A review of Commission licensing records reflects a station status and file jacket copy, which is the Commission's copy of duplicate information set forth on Kittitas's license for call sign KNKI817. This document indicates that the authorization for call sign KNKI817 was granted on August 20, 1987 and that it expired July 1, 1988. The document was printed on August 24, 1987 and indicates that, with respect to location no. 1 in Ellensburg, WA (the only facility Kittitas constructed), "21821-CD-ML-1-87 covers 23808-CD-P/L-2-85,

¹⁶ Petition at 4.

¹⁷ Auction 40 closed December 5, 2001.

¹⁸ See former rule section 22.45, 47 C.F.R. § 22.45 (1983).

¹⁹ As Kittitas acknowledges, the Commission did not adopt license expiration dates on a license-by-license basis until the mid-1990s. Petition at 6, fn 9.

²⁰ *License Renewal PN* at 1.

granted 8/20/87.” Kittitas argues that the license to cover was never received and therefore it had no notice of the applicable expiration date for call sign KNKI817. Assuming, *arguendo*, that Kittitas failed to receive a covering authorization, we nonetheless find that Kittitas had notice of the expiration date for call sign KNKI817. As discussed above, such notice was afforded through the Commission’s release of the *License Renewal PN* on April 21, 1988, which was released two years after the initial grant of call sign KNKI817, and prior to the July, 1988 uniform expiration date for wireline common carrier PLM licensees.

9. Under the Commission’s rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.²¹ In fact, licenses automatically terminate upon the expiration date, unless a timely renewal is filed.²² Kittitas did not seek renewal of its authorization until February 13, 1998, almost nineteen months after the date Kittitas incorrectly argues its license should have expired, and almost ten years after the applicable July, 1988 deadline. Accordingly, the Branch properly dismissed Kittitas’s request for reinstatement.²³

10. We also find without merit Kittitas’s argument that the Commission’s grant of an application to transfer of control of Kittitas²⁴ was “indicative of the Bureau’s intention to give favorable action to the late-filed license renewal application.”²⁵ Kittitas’s application to renew call sign KNKI817 was assigned FCC File No. 000053376 and was not acted upon in conjunction with the grant of Kittitas’s separately filed transfer of control application, which was assigned File No. 21428-CD-TC-98. Kittitas acknowledged in its renewal application that the status of station KNKI817 “is in doubt”²⁶ and requested that the Commission consent to the transfer of control “even though the status of station KNKI817 is not resolved.”²⁷ We clarify that the Branch’s action in granting Kittitas’s request for a transfer control was not a grant of the renewal application and, accordingly, the transferee remains subject to our disposition of Kittitas’s Petition and Waiver Request as it relates to the status of call sign KNKI817.

11. We now consider Kittitas’s Waiver Request. Under section 1.925 of the Commission’s rules, a waiver may be granted if it is shown that (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or that the applicant has no reasonable alternative.²⁸ For the reasons set forth below, we find that it is in the public interest to grant in part Kittitas’s Petition by granting a limited waiver which would reinstate Kittitas’s license under call sign KNKI817 to operate on a *secondary basis*. This action is consistent with our recent decision in *Billy Williford d/b/a Jasper Mobil Phone*,²⁹ where we granted a renewal application

²¹ 47 C.F.R. § 1.926(b) (1996). Current Commission rule 1.949(a), 47 C.F.R. § 1.949(a), requires timely renewal.

²² 47 C.F.R. § 22.144(a) (1996). See also current Commission rule 1.955(a)(1), 47 C.F.R. § 1.955(a)(1).

²³ Kittitas’s failure to timely submit its renewal application could not have been the result of confusion over whether former rule section 22.45 governed, as Kittitas did not submit its renewal application until 19 months after the date Kittitas argues the license should have expired.

²⁴ See *Public Notice*, Report No. LB – 98-36, rel. April 17, 1998.

²⁵ Petition at 4.

²⁶ See Kittitas Valley Paging Limited Partnership FCC Form 490 Application for Assignment of Authorization or Consent to Transfer of Control, FCC File No. 21428-CD-TC-98, at p 2.

²⁷ *Id.*

²⁸ 47 C.F.R. § 1.925.

²⁹ See *In the Matter of Billy Williford d/b/a Jasper Mobil Phone, Order*, DA 02-22 (Com. Wir. Div. rel. January 8, 2002) (*Williford*).

filed sixteen months after the renewal deadline seeking reinstatement of a lower band paging authorization. In *Williford*, we noted that the Commission had conducted an auction of upper and lower band paging spectrum to award geographic licenses to high bidders. Under the new licensing rules, geographic licensees are required to protect incumbent (non-geographic) licensees by allowing them to continue to operate under their existing authorizations with full protection from co-channel interference from geographic licensees.³⁰ We found that Williford was not entitled to such primary protection because the renewal application was filed sixteen months late.³¹ Nonetheless, we found that it was in the public interest to reinstate Williford's expired authorization on a secondary basis as a result of Williford's substantial showing that he: 1) provided service to public safety entities; and 2) provided service to rural areas that may otherwise be without critical communications service.³²

12. Kittitas has made a substantial showing that it has provided service for many years in a rural area of Washington and that most of its customers are in fact public safety entities. Kittitas provides service to over 240 subscribers in rural Kittitas County, Washington, including important government entities engaged in activities involving the life and safety of the public. Kittitas's customers include the Kittitas Valley Community Hospital, the Kittitas County Prosecutor, the Ellensburg School District, the City of Ellensburg, and the Cle Elum Police Department.³³ Kittitas states that its station is tied into a multi-carrier, wide-area paging network on 158.10 MHz via a switch located in Yakima, WA and that Kittitas provides not only numeric and alphanumeric, but also voice paging, which has "become a rarity in the U.S."³⁴ Kittitas also states that its service is the only service available in Kittitas County on a wide-area basis and that "even the substitution of a local-only service would be inadequate if the paging subscriber requires wide-area service."³⁵ We recognize that a geographic licensee is likely to commence service less quickly in rural than in more urbanized areas.³⁶ Given the unique circumstances of this case, including Kittitas's provision of service to public safety entities on a wide-area basis in a rural area, we conclude that it would be in the public interest to grant a limited waiver to permit Kittitas to continue operations until a geographic area licensee is available and elects to provide paging service in the Ellensburg, WA Area.

13. Grant of this limited waiver is subject to the following conditions: 1) any license granted to Kittitas pursuant to this waiver will have secondary status to the ultimate geographic area licensee for the basic economic area (BEA) into which any of Kittitas's interference contour is a part; and 2) upon receiving notice from a geographic area licensee that the geographic area licensee intends, within ninety days, to initiate operation of a facility, where the facility's service contour will overlap with the interference contour of any transmitter licensed pursuant to this waiver, Kittitas shall, within ninety days

³⁰ See *Williford* at ¶ 9.

³¹ *Id.*

³² *Williford* at ¶¶ 6-7. We note that the Commission has also granted certain paging licensees that operate in rural areas or provide service to public safety users a waiver of the paging application freeze to expand existing service areas on a secondary basis to the geographic licensee. See *In re Application of Pierre Radio Paging and Telephone Company*, Order, DA 01-816 (2001); *In the Matter of Adams Telephone Cooperative*, Order, DA 01-815 (2001); *In the Matter of Acadian Ambulance Services, Inc.*, Order, 14 FCC Rcd 19310 (1999); *In re Application of JSM Tele-Page, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 19516 (1999).

³³ Kittitas's Petition includes letters from various public safety users on its system supporting the reinstatement of Kittitas's paging system.

³⁴ Petition at 9.

³⁵ *Id.*

³⁶ *Williford* at ¶ 7.

of receiving such notice, either cease operation of the transmitter in question or change its technical parameters to eliminate the overlapping interference contour.³⁷

14. We find that these conditions are in the public interest based on the Commission's goals of establishing new rules for a transition from site-by-site to geographic area licensing for all paging services authorized on an exclusive, non-nationwide basis. Specifically, the new geographic area licensing rules were intended to establish a comprehensive and consistent regulatory scheme that would simplify and streamline licensing procedures and provide a flexible operating environment for all paging services.³⁸ We further believe these specific conditions appropriately balance the importance of allowing Kittitas to continue providing a vital public service against the importance of preserving sanctions that could have resulted in termination of its license based on Kittitas's failure to file a timely renewal application. In particular, we believe that this plan will provide Kittitas with both the incentive and a reasonable amount of time to negotiate an arrangement, such as partitioning, with the geographic licensee, if warranted, and at the same time will protect both Kittitas and the public from the consequences of unnecessarily forcing Kittitas to discontinue its service. We note that it is incumbent on Kittitas to make arrangements, if necessary, that will permit it to continue to offer the services discussed in this Order.³⁹

15. The Branch shall return Kittitas's application, File No. 0000053376, to pending status as of the release date of this Order. Within thirty days of that date, if the conditions set forth in this Order are acceptable to Kittitas, it shall electronically file an amendment to its application indicating that it will accept these conditions. Upon receipt of this submission, the Branch will process the application in accordance with this Order and Commission rules and procedures, notwithstanding the deadline for filing renewal applications.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that, pursuant to sections 4 (i), 303 (r), and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303 (r), 405, and sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Reconsideration filed by Kittitas Valley Paging Limited Partnership on April 7, 2000 is GRANTED IN PART, subject to the conditions described in this Order.

17. IT IS FURTHER ORDERED that, pursuant to sections 4 (i), 303 (r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303 (r), and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Request for Waiver filed by Kittitas Valley Paging Limited Partnership on February 11, 1998 is GRANTED, subject to the conditions described in this Order.

³⁷ *Williford* at ¶ 8; *see also* In the Matter of Acadian Ambulance Services, Inc., *Order*, 14 FCC Rcd. 19310 (1999) (waiving the freeze on paging applications and imposing these same conditions on any license granted based on the waiver).

³⁸ Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Notice of Proposed Rulemaking*, 11 FCC Rcd 3108, 3109, ¶ 1, 3113, ¶ 21 (1996).

³⁹ *Williford* at ¶ 10.

18. IT IS FURTHER ORDERED that, pursuant to sections 4 (i) and 303 (r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303 (r), and sections 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Commercial Wireless Division's Licensing and Technical Analysis Branch shall return Kittitas's application, File No. 0000053376, to pending status as of the release date of this Order, and process Kittitas's application for renewal of the license for call sign KNKI817, subject to the conditions described in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari, Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau